

11/3/05



0000032742

DIRECTOR

225

COMMISSIONERS
 JEFF HATCH-MILLER - Chairman
 WILLIAM A. MUNDELL
 MARC SPITZER
 MIKE GLEASON
 KRISTIN K. MAYES

ORIGINAL



BRIAN C. McNEIL
 EXECUTIVE DIRECTOR

SECURITIES DIVISION
 1300 West Washington, Third Floor
 Phoenix, AZ 85007
 TELEPHONE: (602) 542-4242
 FAX: (602) 594-7470
 E-MAIL: securitiesdiv@azcc.gov

ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Jeff Hatch-Miller, Chairman
 William A. Mundell, Commissioner
 Marc Spitzer, Commissioner
 Mike Gleason, Commissioner
 Kristin K. Mayes, Commissioner

FROM: Matthew Neubert
 Director of Securities

DATE: October 18, 2005

RE: Proposed Amendment to Rule A.A.C. R14-4-149
 Docket No. RS-00000A-05-0702

cc: Brian C. McNeil, Executive Director

AZ CORP COMMISSION
DOCUMENT CONTROL

2005 OCT 20 P 3:59

RECEIVED

The Securities Division is seeking permission from the Commissioners to publish a Notice of Proposed Rulemaking concerning A.A.C. R14-4-149 ("rule 149"). The publication in the Arizona Administrative Register of a Notice of Proposed Rulemaking begins the formal rulemaking process by soliciting comments from the public regarding the proposed changes. Attached for your review is a copy of the proposed rule 149 and a copy of the proposed order.

Common to the securities industry is the distribution of notices (sometimes referred to as tombstone ads) and preliminary prospectuses (sometimes referred to as red herrings) regarding an upcoming securities offering between the time an application for registration of the securities offering is filed and the effective date of the registration. The Securities and Exchange Commission ("SEC") has adopted a number of rules to govern the use and content of such types of information distributions. Arizona rule 149 provides an exemption from registration for offers made in accordance with those SEC rules.¹ The public is protected because sales can be made only after the registration application is effective. At the same time, the public benefits through the receipt of information regarding the upcoming securities offerings.

The SEC has amended one of the federal rules incorporated into rule 149,² to be effective December 1, 2005. The Securities Division recommends that the Commission amend rule 149 to reflect the changes in the federal law.

DOCKETED

OCT 20 2005

¹ 17 C.F.R. 230.134 ("rule 134"), 17 C.F.R. 230.255 ("rule 255"), or 17 C.F.R. 230.430 ("rule 430")
² Rule 134.

DOCKETED BY

70401

The SEC has amended federal rule 134 as a small part of an expansive rulemaking designed to "modify and advance significantly the registration, communications, and offering processes under the Securities Act of 1933."³ A primary goal of the SEC rulemaking is to provide more timely investment information to investors.

Federal rule 134 allows the publication of an identifying statement (tombstone ad) that can be used to locate persons that might be interested in receiving a prospectus. The SEC has modified and expanded the information permitted to be included in the statement under federal rule 134 to include information that investors may find helpful, such as increased information about the issuer and its business, increased information about the terms of the securities being offered, and additional factual information about the procedures for transactions in connection with the offering process. The publication under federal rule 134 cannot include information that is not disclosed in the filed and pending application for registration.

The Securities Division also proposed to amend rule 149 to incorporate an SEC amendment to federal rule 430, adopted in SEC Release No. 33-8088, effective June 1, 2002. That amendment was a technical amendment to reflect the use of a new SEC registration form.

The Securities Division has solicited the informal advice and comments of the securities section of the Arizona State Bar and the Division's staff regarding the proposed amendments to rule 149.

The Securities Division recommends that the Commission order that a Notice of Proposed Rulemaking be submitted to the secretary of state's office for publication and a hearing be scheduled for a date no earlier than January 9, 2006, to solicit public comment.

Originator: ctf

³ See SEC Release No. 33-8591 available at <http://www.sec.gov/rules/final.shtml>.

R14-4-149. Exemption from registration for offers made in connection with a pending application.

- A. If all of the following apply, offers made in accordance with the requirements under U.S. Securities and Exchange Commission rule 134, 17 C.F.R. 230.134 (20012006), rule 255, 17 C.F.R. 230.255 (20012005), or rule 430, 17 C.F.R. 230.430 (20012005), which are incorporated by reference and contain no later editions or amendments, shall be added to the class of transactions exempt under A.R.S. § 44-1844.
1. The issuer has applied for registration of the securities to which the offers relate under the Securities Act of 1933, or the securities are exempt from registration under that act.
 2. The issuer has filed with the Commission an application for registration of the securities to which the offers relate, or the issuer has filed a notice under A.R.S. § 44-1843.01(B).
 3. The issuer, or any of its predecessors, affiliates, directors, officers, general partners, or individuals holding a similar position of leadership, or beneficial owners of ten percent or more of any class of its equity securities do not fall within any of the disqualification provisions of A.R.S. § 44-1901(G)(1) through (6).
 4. The issuer is not applying for registration under A.R.S. § 44-1902.
 5. The offering is not of a blind pool as defined in A.R.S. § 44-1801(1).
 6. The offering is not of speculative or high risk securities as defined by A.A.C. R14-4-118(C).
 7. No part of the purchase price is received until the securities are registered in Arizona, or the exemption under A.R.S. § 44-1843.01(B) is effective.
 8. An indication of interest in response to an offer made under this Section involves no obligation or commitment of any kind.
- B. ~~The rules incorporated by reference are on file with the Office of the Secretary of State.~~ Copies of the incorporated material are available from the Commission and the Superintendent of Documents, Government Printing Office, Washington, DC, 20402. Copies are also available at <http://www.gpoaccess.gov/cfr/index.html>.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 Jeff Hatch-Miller, Chairman
4 William A. Mundell
5 Marc Spitzer
6 Mike Gleason
7 Kristin K. Mayes

8 In the matter of)

9 PROPOSED RULEMAKING TO AMEND)
10 A.A.C. R14-4-149)

DOCKET NO. RS-00000A-05-0702

11 DECISION NO. _____

12 ORDER

13 Open Meeting
14 November 3, 2005
15 Phoenix, AZ

16 BY THE COMMISSION:

17 INTRODUCTION

18 The Securities Division of the Arizona Corporation Commission (the "Commission") has
19 forwarded to the Commission a proposal recommending that the Commission amend A.A.C. R14-4-
20 149 ("rule 149") of the Arizona Administrative Code governing the administration of the securities
21 statutes.

22 FINDINGS

23 1. Rule 149 provides an exemption from registration for offers of securities made in
24 accordance with the requirements under 17 C.F.R. 230.134 (2001) ("rule 134"), 17 C.F.R. 230.255
25 (2001) ("rule 255"), or 17 C.F.R. 230.430 (2001) ("rule 430").

26 2. Rules 134, 255, and 430 are incorporated into rule 149 by reference in accordance
with A.R.S. § 41-1028 and A.A.C. R1-1-414.

3. The Securities and Exchange Commission has amended rule 134, effective
December 1, 2005, and rule 430, effective June 1, 2002.

4. The Securities Division has recommended that the Commission amend rule 149 to incorporate rules 134 and 430 as amended by the Securities and Exchange Commission.

5. The Securities Division has recommended that a notice of the proposed rulemaking regarding rule 149 be forwarded to the secretary of state. The Securities Division also has recommended that the Hearing Division schedule a hearing on rule 149 for a date no earlier than January 9, 2006.

6. The Commission finds that the Securities Division's recommendations have merit and that the proposed amendment to rule 149 should be published and public comment obtained.

CONCLUSION OF LAW

The Commission has the authority for the proposed rulemaking under the Arizona Constitution Article XV §§ 6 and 13, and under A.R.S. §§ 44-1821 and 44-1845.

ORDER

THEREFORE IT IS ORDERED that a hearing be set by the Hearing Division on this matter to be held at the Commission Offices in Phoenix, Arizona, on a date no earlier than January 9, 2006.

...

...

...

...

...

...

...

...

...

...

1 IT IS FURTHER ORDERED that the Securities Division prepare a notice of the proposed
2 rulemaking and forward it to the office of the secretary of state for publication in the Arizona
3 Administrative Register.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION
6
7

8 CHAIRMAN

COMMISSIONER

10 COMMISSIONER

COMMISSIONER

COMMISSIONER

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
13 Executive Director of the Arizona Corporation
14 Commission, have hereunto set my hand and caused
15 the official seal of the Commission to be affixed at
16 the Capitol, in the City of Phoenix, this _____ day of
17 _____, 2005.

17 BRIAN C. McNEIL
18 Executive Director

19 _____
20 DISSENT
ctf

21 This document is available in alternative formats by contacting Linda Hogan, ADA Coordinator,
22 voice phone number 602-542-3931, E-mail lhogan@azcc.gov
23
24
25
26